

Southwestern Bell

May 22, 1992

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MAY 26 1992

Federal Communications Commission
Office of the Secretary

Dear Bill:

Re: Comments of Southwestern Bell Telephone Company,
CC Docket No. 92-90

Enclosed please find an original and five (5) copies of the above-referenced pleading to be filed with the Secretary of the Commission on Tuesday, May 26, 1992. Also enclosed is a copy of the pleading to be filed-stamped and returned to me.

Additional copies of the pleading are attached to be used as the courtesy copies and one is included for your files.

Please call to confirm that the pleading has been filed. Thank you for your assistance.

Very truly yours,



(f) Richard C. Hartgrove

Enclosure

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St. Louis, MO 63101

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAY 26 1992

Federal Communications Commission
Office of the Secretary

In the Matter of)

The Telephone Consumer Protection)
Act of 1991)

CC Docket No. 92-90

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

SOUTHWESTERN BELL TELEPHONE COMPANY

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SUMMARY*

SWBT supports Proposed Rule 64.1100(a)(1) as currently drafted, except that the rule should incorporate the TCPA's prohibition of auto-dialer placed calls to any "other radio common carrier service." SWBT also supports Proposed Rule 64.1100(a)(2) in its current form. These rules squarely address the principal concerns of Congress--auto-dialer placed calls and artificial or pre-recorded voice messages.

On the other hand, the Commission should not engage in regulation of live telephone solicitation calls because (a) substantial benefits are enjoyed by customers receiving such calls, (b) the number of complaints regarding such calls are de minimis, and (c) the TCPA's legislative history does not indicate a substantial concern in this area, and (d) current state laws afford a more than adequate remedy to deter overreaching solicitations. However, should the Commission determine that such regulation is necessary, SWBT recommends that it promulgate rules requiring the establishment of Company-specific "do not call" lists. Only this alternative among those presented for comment would accommodate individual preferences regarding which solicitation calls are welcomed and during what times of the day. It would also be the most cost efficient alternative as virtually no costs would be incurred by anyone.

* All abbreviations used herein are referenced within the text.

Any data base comprised of telephone subscribers who object to receiving live solicitation calls may disappoint subscribers' expectations because it would not accommodate subscribers' individual preferences. If the Commission requires implementation of this alternative, SWBT recommends the establishment of a series of regional data bases, provided that the Commission does not require that non-published or non-listed telephone numbers must be provided to the data bases, and provided further that the costs of such data bases are absorbed exclusively by those telemarketing entities who procure listing information from them.

Network technologies designed to deter live solicitations are not feasible, principally because there does not appear to be a single national telephone number prefix available for assignment only to telemarketers. Even if a single national prefix could be selected, current technology does not permit the called party to block all calls from a single prefix on a terminating line basis.

The establishment of a system requiring special white page directory markings would be wholly ineffectual. Such a system would suffer from a failure to accommodate subscribers' individual preferences. A change in a customer's decision could not be implemented timely because the resultant change of indicator in the directory would not be reflected until the subsequent directory was distributed -- a period of as long as one year. Finally, directory publishers probably would be unable to recover their costs incurred in placing the directory markings as there is little possibility of preventing telemarketers from "scanning" the directories without compensating the directories' publishers.

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Pursuant to Sections 1.415 and 1.419 of the Commission's Rules (47 C.F.R. Sections 1.415, 1.419), Southwestern Bell Telephone Company (SWBT), by its attorneys, respectfully submits Comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) concerning the Telephone Consumer Protection Act of 1991 (TCPA).

I. BACKGROUND AND INTRODUCTION

On December 20, 1991 Congress enacted the TCPA, amending Title II of the Communications Act of 1934, 47 U.S.C. Section 201 et seq., by, among other things, placing restrictions upon the use of automatic telephone dialing systems and the use of artificial or pre-recorded voice messages. On April 17, 1992, the Commission issued a NPRM, seeking comment on proposed regulations to implement the TCPA.

SWBT's Comments support, with minor exceptions, the Commission's currently proposed rules relating to "auto-dialers" and artificial or pre-recorded messages. These proposed rules essentially reflect the prohibitions set forth in the TCPA and Congress' intent in enacting them.

However, SWBT does not believe that Commission regulation in the area of live telemarketing solicitations is warranted.

Should the Commission determine otherwise, establishment of company-specific "do not call" lists appears to be the best among the alternatives presented for comment. It balances appropriately the privacy rights of residential subscribers and the commercial speech rights of telemarketing organizations. Each of the remaining alternatives suffers from deficiencies which may well disappoint both subscribers and telemarketers. In any event, the Commission should not select any of these alternatives without ensuring that all associated expenses will be paid solely by telemarketers.

II. THE COMMISSION'S PROPOSED RULES REGARDING AUTO-DIALER PLACED CALLS SHOULD BE ADOPTED LARGELY IN THEIR CURRENT FORM.

The Commission seeks comment on several proposed rules restricting telephone calls that utilize any auto-dialer, as well as telephone calls utilizing an artificial or pre-recorded voice message.¹ Proposed Rule 64.1100(a)(1) would prohibit initiating any telephone call using either an auto-dialer or an artificial or pre-recorded voice to: (1) various emergency telephone lines; (2) any telephone line of certain health care facilities; (3) any telephone number assigned to certain specialized services; and (4) any service in which the called party is charged for the call. Proposed Rule 64.1100(a)(2) would prohibit initiation of any telephone call to a residence using an artificial or pre-recorded voice unless the residence subscriber has first given consent, except in emergency situations or when exempted by Proposed Rule 64.1100(c).

¹ NPRM, para. 8 and Appendix B.

SWBT supports these rules because they essentially restate the express prohibitions set forth in the TCPA. However, certain portions of the Commission's NPRM suggest the Commission may be prepared to promulgate rules regarding the use of auto-dialers which would be inconsistent with the language of the statute.

For example, the Commission comments in passing that under the TCPA "[a]uto dialer calls are prohibited to: residential telephone lines without the consent of the called party."² It also states that "[t]he TCPA expressly prohibits unconsented to auto dialer calls to residences, subject to the exemptions to be adopted by the Commission."³ Neither statement is entirely accurate. The express language of the TCPA does not establish such prohibitions, nor does it require the FCC to do so.

Section 227(b)(1)(B) of the TCPA prohibits initiating "any telephone call to any residential telephone line using an artificial or pre-recorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission" (emphasis added) On its face, the statute does not prohibit the mere initiation of a telephone call to a residence using an auto-dialer, and nowhere in the Act is the use of such equipment otherwise prohibited in this context.

The auto-dialer prohibitions stated at Section 227(b)(1)(A) of the TCPA evidence that Congress considered the

² Id., para. 8.

³ Id., para. 18.

unrestricted use of such devices as threats to public safety. Congress' concerns are met by the TCPA's narrowly drafted prohibitions of such calls and by the Commission's currently proposed rules. Congress also sought to protect residential subscribers' privacy interests in limiting use of artificial or pre-recorded messages, and in prohibiting telephone line "seizure" by auto-dialers. However, both of these objectives also have been addressed specifically, and adequately, elsewhere in the Act. The Commission should not interpret the Act as prohibiting mere use of auto-dialers to initiate telephone calls to residences because Congress did not intend that result.

The Commission's appreciation of the TCPA's limited auto-dialer prohibitions is important to SWBT. SWBT's employees routinely make collection calls to subscribers to collect payment of overdue bills. On some occasions, the telephone numbers of the overdue subscribers are stored in and dialed by a "predictive" auto-dialer. When the subscriber answers, the auto-dialer immediately connects the call to a company employee who then identifies himself or herself and states the purpose of the call. The subscriber is unaware of the manner in which the call was dialed, nor would he or she have any reason to care.

On those rare occasions when a live attendant is not immediately available, a pre-recorded message asks the customer to "hold" until one becomes available. As demonstrated below in Section III, SWBT's use of a recorded message in these circumstances should be permitted as an exemption to the TCPA's general prohibitions. However, this reasonable business practice will be unavailable to SWBT and others if the Commission

promulgates rules flatly prohibiting auto-dialer placed calls to residences, because neither the Act nor the proposed rules state any exemption to their general auto-dialer prohibitions.⁴

III. THE PROPOSED EXEMPTIONS FOR CERTAIN CALLS USING AN ARTIFICIAL OR PRE-RECORDED VOICE ARE APPROPRIATE AND SHOULD BE ADOPTED IN THEIR CURRENT FORM.

Proposed Rule 64.1100(a)(2) prohibits the initiation of any telephone call to a residence by means of an artificial or pre-recorded voice message without prior consent, unless the call is in the nature of an emergency or is exempted by Proposed Rule 64.1100(c). The Commission seeks comment on Proposed Rule 64.1100(c)(3), which would provide that placement of a telephone call in such a fashion "to any person with whom the caller has had a prior or current business relationship at the time the call is made" would be exempted from the TCPA's prohibitions set forth in Proposed Rule 64.1100(a)(2).⁵ The Commission also seeks comment on Proposed Rule 64.1100(c)(2), which would exempt any such call "made for a commercial purpose but [which] does not include the transmission of any unsolicited advertisement."⁶

SWBT agrees with the Commission's observation that a contact by a caller with whom the called party has already chosen

⁴ SWBT also notes that Section 227(b)(1)(A)(iii) of the TCPA prohibits auto-dialer placed calls to any telephone number assigned to a specialized mobile radio service "or other radio common carrier service." The quoted language, however, is not carried forward to Proposed Rule 64.1100(a)(1)(iii). To fully implement Congress' mandate, the proposed rule should incorporate the Act's language so that this inconsistency will be eliminated.

⁵ NPRM, paras. 13-14 and Appendix B.

⁶ Id., para. 11 and Appendix B.

to do business is not as intrusive as a call from one with whom the called party has no such relationship.⁷ Thus, SWBT supports the exemption set forth in Proposed Rule 64.1100(c)(3). SWBT also agrees with the Commission's further observation that informational messages not seeking to sell a product or service do not raise privacy concerns.⁸ Thus, SWBT also supports the exemption stated in Proposed Rule 64.1100(c)(2).

Further, as mentioned earlier, certain SWBT debt collection calls use a predictive auto-dialer, the great majority of which culminate in a conversation with a live attendant after the called party answers the call. In approximately 1% of these cases, a live attendant is not immediately available. In these instances, a pre-recorded message announces the purpose of the call and asks the called party to hold momentarily for a live representative. Calls placed in such a manner in no sense invade the called party's legitimate expectation of privacy. In each case the called party already has an ongoing business relationship with SWBT, and is not being approached to buy a product or service. Indeed, calls initiated by a pre-recorded message in this context are to the advantage of the residential customer because the purpose of the call typically is to avert the suspension of telephone service by procuring adequate payment arrangements.

⁷ Id., para. 13.

⁸ Id., para. 11.

IV. REGULATION OF LIVE SOLICITATION CALLS IS NOT NECESSARY AT THIS TIME.

The Commission seeks comment on whether regulation of live solicitation may be necessary in order to protect residential subscribers' privacy rights.⁹ Such regulation is neither necessary nor justified at this time.

Several years ago, the Commission recognized that many subscribers do not object to receiving unsolicited telemarketing calls. It also acknowledged that substantial numbers of those receiving such calls want to purchase the goods or services offered to them in this manner.¹⁰ Most recently, the Commission again has observed, and SWBT agrees, that many consumers continue to find such unsolicited contacts beneficial. The Commission notes that in 1990 alone consumers' interest in the receipt of such calls generated \$435,000,000,000 in sales, a more than four-fold increase since 1984.¹¹ Thus, there is no question that many consumers are well served by the unrestricted receipt of live telemarketing solicitation calls.

The Commission's observations support the further conclusion that the number of consumer complaints regarding such calls is insignificant. In fact, even presuming that several million unsolicited sales calls are completed each business day,¹² the Commission reports having received only 74 complaints involving

⁹ Id., para. 26.

¹⁰ In the Matter of Unsolicited Telephone Calls, CC Docket No. 78-100, 77 F.C.C.2d 1023, 1031, 1036 (1980) ("Unsolicited Calls Proceeding").

¹¹ NPRM, para. 24.

¹² Unsolicited Calls Proceeding, 77 F.C.C.2d at 1030.

live solicitations in 1991.¹³ Further assuming that all of these complaints were legitimate, they constitute less than 10 percent of the relatively small number of complaints received by the Commission regarding unsolicited telephone calls, the remainder being complaints involving auto-dialers.¹⁴ Whether viewed alone, or relative to the number of complaints received from subscribers about auto-dialers, the matter of complaints regarding live solicitations is de minimis. These complaints likewise pale in comparison to the obvious benefits enjoyed by those consumers who, as noted above, do substantial business as a result of being called on an unsolicited basis at their residences.

Nor does the legislative history cited by the Commission suggest that regulation of live solicitation telephone calls is necessary. In essence, Congress' intent was directed to limiting the use of auto-dialers (for public health and safety reasons), and limiting the use of artificial or pre-recorded voice messages directed toward the home (for privacy reasons).¹⁵ In the TCPA, and in the Commission's currently proposed rules, these ends will be achieved. Because the Act's legislative history does not suggest a substantial concern over live solicitations, regulation in that area is neither necessary nor justified at this time.

Furthermore, current state laws afford a more than adequate remedy to consumers who have become victims of fraud or deceptive practices involving live solicitations. The statutory

¹³ NPRM, para. 24.

¹⁴ Id.

¹⁵ Id., para. 25.

laws of many states, if not the common laws of all, allow a consumer to turn to appropriate authorities other than this Commission, including the courts, where fraud or other commercial abuse is perpetrated by telemarketers.¹⁶ The TCPA preserves all causes of action arising under these statutory or common laws.¹⁷ In the absence of evidence showing that these readily available remedies are insufficient to protect against overreaching, the Commission should not engage its own resources to regulate this area.

For these reasons, SWBT proposes that the Commission not engage in rulemaking at this time regarding live telemarketing solicitations. What relatively minor ills exist in this area may be cured otherwise, especially in light of the serious commercial speech issues raised by the various alternatives proposed.

V. ESTABLISHMENT OF COMPANY-SPECIFIC "DO NOT CALL" LISTS WOULD BE RESPONSIVE TO SUBSCRIBERS' PREFERENCES AND WOULD BE COST EFFICIENT.

The Commission seeks comment on an alternative type of self-policing mechanism whereby a residential subscriber would simply advise the calling telemarketer to place his or her name on a list assuring that no more calls from that organization would be placed to him or her in the future.¹⁸ Of the alternatives presented for comment, this would be the best. It would be

¹⁶ Id., para. 26.

¹⁷ TCPA, Section 227(e)(1).

¹⁸ NPRM, para. 32.

responsive to telephone subscribers' individual preferences, easy for subscribers to implement and cost efficient.

Under such a system, each residential subscriber would be permitted to make an individual choice regarding any telemarketing organization wishing to contact the subscriber's home. That personal choice would also be expressed on the first such call received from the telemarketing organization. For example, the subscriber may be in need of certain lines of products or services, such as lawn care or home siding, and therefore may not want to give a "do not call" instruction to a given telemarketer. On the other hand, a residential subscriber who did not need or wish to do business with these lines of businesses could simply say so by telling them on the first telephone call received.

Such a simple concept also is the one most amenable to individual preferences regarding calls from specific companies within a particular line of business or profession. For its part, SWBT already has begun to develop an internal "do not call" system among its own customers and has found it to be highly effective in communicating with them.

This alternative also affords the benefit of timely and direct implementation. By voicing a simple "do not call me again," the residential subscriber could ensure that the direction was immediately communicated to the calling party. The subscriber could be assured that the direction would be heeded henceforth after completion of the initial telephone call by appropriate Commission rules compelling the telemarketer to do so.

Finally, virtually no costs would be incurred by implementing this system. The telemarketer would merely need to update its own "do not call" list.

VI. THERE ARE SEVERAL IMPORTANT CONSIDERATIONS REGARDING ESTABLISHMENT OF ANY DATA BASE USED FOR RESTRICTING TELEMARKETING CALLS.

The Commission seeks comment on the establishment and operation of a single national data base, or regional data bases, to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that list available for purchase.¹⁹ Such a data base may not, however, satisfy subscribers' expectations of its capabilities. Further, while the technology exists at SWBT to implement such an alternative, certain potential obstacles merit the Commission's serious consideration.

A. A Data Base Concept May Not Fulfill Subscribers' Expectations.

SWBT shares the Commission's general concern that consumer expectations regarding a data base may not be satisfied by what a data base would be able to deliver.²⁰ This concern no doubt stems from such a system's "all or none" approach, by which all calls are either stopped or permitted regardless of the nature of individual calls.

For example, subscribers who do not object to receiving solicitation calls from certain entities, such as charities, may

¹⁹ Id., para. 28-29.

²⁰ Id., para. 28.

not want to receive other forms of solicitation. Thinking theirs is an "all or none" option, customers might refrain from participating in the "do not call" data base, thus losing the benefit of deterring unwanted non-charitable solicitation calls. On the other hand, other residential subscribers who wish to receive no solicitation calls whatsoever may become dissatisfied when, after choosing to participate in the data base, they receive what they thought were prohibited telephone calls from charities whose solicitations are exempted by the TCPA. Further, some consumers may not object to calls marketing certain products or services, yet have no desire to receive calls from those selling others. An "all or none" approach is wholly deficient to meet such preferences.

Finally, certain residential subscribers have no objection to receiving calls during certain periods of the day, but object to receiving calls at other times. Some subscribers are not offended by or may welcome receiving calls from a local merchant, but do not wish to be solicited by businesses located outside of their community. Such individual circumstances as these demonstrate vividly why subscribers may simply decline to participate in any data base, or suffer a sense of frustration or disappointment in its consequences if they do participate.

B. Such Data Bases Should Be Regional.

Should the Commission conclude that a data base concept is appropriate, SWBT suggests that a series of regional data bases be established. SWBT would be willing to administer a regional

data base encompassing its five-state service area,²¹ with appropriate assistance from independent telephone companies (ITCs), provided (a) that the regulations for implementing such a data base appropriately treated its customers with non-published and non-listed telephone numbers, and (b) that SWBT was compensated by those telemarketers seeking data base listing information.

SWBT already maintains a daily-updated data base of approximately 15.2 million listings. These listings include residential, business and government subscribers throughout SWBT's territory. The listings stored within the data base include not only those of the 12.2 million subscribers with which SWBT has a direct relationship as their local exchange carrier (LEC), but also those of the 3 million subscribers whose ITCs receive directory assistance services from SWBT. Presently, SWBT holds approximately 98 percent of the listings of those customers served by ITCs in SWBT's five-state service area.

Given that SWBT already houses the core listing information which would be required in any new data base, allowing SWBT to maintain such a data base would negate the need for establishing an entirely new entity responsible for doing so. This would surely result in lower overall costs to establish and maintain such a data base.

Adopting SWBT's suggestion would also mean that the presentation of the options to customers and implementation of the customers' wishes could be handled most easily. Should a national data base be adopted, under the TCPA each common carrier providing

²¹ SWBT's service area encompasses Arkansas, Kansas, Missouri, Oklahoma and Texas.

telephone exchange service would be required to inform its subscribers of their opportunity to object to receiving telephone solicitations. Furthermore, each LEC would be obliged to inform each customer of his or her right to give or revoke a notification of an objection.²² Because SWBT would have to communicate with each of its own customers to advise them of their rights and how to exercise them, and because SWBT is the LEC for the majority of customers in its region, making SWBT responsible for such a data base would be the most direct and efficient method of implementing its customers' preferences.

Similarly, each ITC within SWBT's five states could discharge its duties under the Act by submitting to SWBT lists of its own subscribers who object to receiving solicitation calls. As noted, SWBT's data base already holds approximately 98% of the ITCs' subscriber listings. Each ITC could simply determine from its own customers, with whom SWBT has no direct relationship, whether they wish to not be contacted by telemarketers, and then pass that information to SWBT for incorporation into the regional data base.

However, as discussed below, any regional data base coordinated by SWBT must address the concerns of SWBT's customers with special listings and must be paid for by telemarketing organizations.

²² Section 227(c)(3)(B), (C).

C. Such Data Bases Should Not Include Non-Published Or Non-Listed Telephone Numbers.

SWBT presumes that a regional data base within its area of operations would contain names and telephone numbers of its over 1.8 million residential customers who have "non-published" and "non-listed" numbers. Customers with non-published numbers have instructed SWBT not to publish their telephone numbers in its telephone directories, nor provide them through directory assistance. Customers with non-listed numbers have likewise instructed SWBT not to publish their numbers in its directories, but permit their availability through directory assistance. Each type of customer expects and pays for this special treatment of his or her telephone number.²³ Thus, SWBT would not be permitted to provide such information to any data base.²⁴

²³ Indeed, the General Exchange Tariffs of Arkansas, Kansas, Missouri, Oklahoma and Texas, wherein SWBT does business, all mandate that the non-disclosure of non-published numbers should be respected "notwithstanding any claim made by the calling party." Arkansas General Exchange Tariff, § 9.6.2; Kansas General Exchange Tariff, § 7.1.8(B); Missouri General Exchange Tariff, § 6.10.2; Oklahoma General Exchange Tariff, Directory Listings, § 1.6(B); Texas General Exchange Tariff, § 12.6.2 (emphasis added). There are no exceptions to this rule in any SWBT state.

²⁴ It is of no consequence that any telemarketer learning of the "do not call" preference of SWBT's customers having non-published or non-listed numbers would be prohibited from calling on them by means of the telephone. Neither the Commission nor SWBT can guarantee that this prohibition would be observed in each and every case among the almost 2 million subscribers having these special listings. Moreover, customers having such private numbers would likely be upset if an after-the-fact exception for delivery to a data base was created without their specific consent.

D. The Costs Of Each Regional Data Base Should Be Borne By Telemarketing Organizations.

The cost to establish and maintain each regional data base should be placed upon those telemarketing organizations that rely upon them to comply with the requirements of the TCPA. Congress has already precluded the imposition of any additional charges to telephone subscribers,²⁵ and if SWBT bears the cost, the expense ultimately will be shouldered by subscribers (through increased tariffed service rates), in contravention of the TCPA's intent. It is only fair that the telemarketing organizations that use the data base pay for the information. At this time, it is not known what precise costs SWBT would incur in enhancing its current account information and the LSS to accommodate the inclusion of information for customers who seek relief under the TCPA. However, since the Act prohibits charging the called party, and since the Commission has tentatively concluded that such a data base would not receive federal funds or be supported by taxpayers, SWBT should be compensated by telemarketers who draw benefits from any data base that SWBT administers.

VII. NETWORK TECHNOLOGIES DESIGNED TO DETER LIVE SOLICITATION CALLS DO NOT APPEAR FEASIBLE.

The Commission seeks comment on whether present network technologies permit screening out unwanted telemarketing calls. In particular, the Commission seeks to determine whether all telemarketers could be assigned the same telephone prefix from

²⁵ Section 227(c)(2).

which prefix residential subscribers could choose to block calls.²⁶ For several reasons, the assignment of all telemarketers to the same national telephone prefix would be virtually impossible and, at best, highly disruptive to many customers.

To SWBT's knowledge, there is no single national prefix available for assignment to any single group of entities to the exclusion of all others. If the Commission, therefore, determined to reserve a prefix for telemarketing organizations only, those residence, business and government subscribers currently lodged within the selected prefix would necessarily have to change their telephone numbers to a different prefix. No doubt many of these customers would be greatly inconvenienced by such action. Moreover, such a change would be highly disruptive to those business customers who had invested significant dollars in advertising their telephone numbers in newspapers, radio, yellow pages and elsewhere, thus resulting in a loss of much of the "good will" established because customers had come to know their telephone number.²⁷

In addition, it does not appear that all central office locations share even a common range of prefixes. Even if it were possible to select one common prefix, if that prefix is congested,

²⁶ NPRM, para. 30.

²⁷ The Commission has acknowledged that business customers have invested resources in advertising their telephone number and have acquired a public association with that number. It has also recognized that an involuntary number change would result in additional expenses in changing advertising materials reflecting the existing number, such as manuals, brochures, warranties, and catalogs. In the Matter of Competition in the Interstate Interexchange Marketplace, Memorandum Opinion and Order on Reconsideration, CC Docket No. 90-132, ___ FCC Rcd ___, (April 17, 1992).

it would further aggravate customer protests. Subscribers so affected would find the intended benefits clearly outweighed by the manifest inconvenience caused to them.

Even if the establishment of a single telephone prefix for telemarketing organizations were feasible, current technology does not permit the called party to block all calls from a single prefix on a terminating line basis. Presently, only those customers served by a central office featuring electronic switching services have the capacity to block telephone calls. Moreover, even in those offices where technology permits end users to block unwanted calls, this capacity is limited to calls from a caller whose seven-digit telephone number is known to the called party. Such subscribers would not find individual call blocking effective to deter calls from individual telemarketing organizations without knowing the organization's telephone number in advance. Rarely does any consumer know in advance the telephone number of a telemarketing solicitor who may call.

VIII. ESTABLISHMENT OF A SYSTEM REQUIRING SPECIAL DIRECTORY MARKINGS WOULD BE INFLEXIBLE AND COSTLY.

The Commission seeks comment on a proposal to require carriers to collect information from subscribers regarding whether they wish not to receive telephone solicitations, and to identify such subscribers by a special mark in the subscribers' white pages telephone directory listings.²⁸

Presumably, the listings of those subscribers not wishing to receive telemarketing calls would be accompanied by a "bullet"

²⁸ NPRM, para. 31.

or asterisk, and an accompanying explanation would be printed within the introductory portion of each directory. This "all or none" approach would not allow subscribers to receive telephone calls only from certain types of telemarketing organizations. Nor would it permit subscribers to communicate that they were amenable to receiving solicitation calls during certain hours or from local versus non-local callers.

In addition, a directory approach would not allow for responsive treatment of those customers who changed their preference after the directory had been distributed. In many cases, if not most, white pages directories are in circulation for approximately 12 months. Should a residential subscriber determine, after the directory was published, that he or she wished to change a preference given previously, the change in preference could not be reflected until the next annual directory was distributed.²⁹

These deficiencies may well cause subscribers to decline the invitation to state a preference by means of a special mark in their white page directory listings, thus frustrating achievement of the goals being sought. They also suggest that a directory markings approach could not be sufficiently tailored to balance the privacy rights of subscribers with the commercial speech rights of those wishing to call them.

²⁹ The Commission appears to contemplate that any required directory markings would be placed merely in the directories of "carriers." NPRM, para. 31. However, there are many independent directory publishers who do not provide telephone service. Indeed, in some areas, the telephone company's directory is not the most widely used by the public.

Finally, the costs required to publish the special directory markings and to educate the public vary, according to the method of printing employed for the marking itself and the frequency that the explanatory legend or other statement must be printed within the directory. More importantly, it is very unlikely that directory publishers could recover their costs to implement this alternative. Sophisticated telemarketers already possess the technology to "scan" publicly available directories to compile computerized lists. The Commission's promulgation of a directory marking regulation, as a practical matter, would be of no help to publishers who incur additional publishing costs, but whose directories were scanned without their knowledge.³⁰

IX. CONCLUSION

SWBT fully supports adoption of the Commission's Proposed Rule 64.1100 as currently drafted, subject to amending Subsection (a)(1)(iii) therein to conform to the language stated in Section 227(b)(1)(A)(iii) of the TCPA. SWBT opposes federal regulation of live telephone solicitations, but supports establishment of company-specific "do not call" lists as the most consumer-responsive and cost efficient of the proposals on which the Commission has sought comment.

³⁰ For this reason, any rule requiring both a directory and a data base approach also must be avoided. The presence of special markings in directories would provide a source which would compete with any data base, allowing telemarketers to bypass the latter. Such bypass would diminish if not entirely frustrate the ability of the data base operator to recover its costs.